

# EXHIBIT G

**Yothers, Stuart W.**

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**From:** Yothers, Stuart W.  
**Sent:** Tuesday, September 5, 2023 2:39 PM  
**To:** Robert Goodman; David Stone; Julio Gomez  
**Cc:** Ryan, Colleen Noonan; Holmes, Jacqueline M.; Kurtenbach, Collin; Robert Magnanini; Stephen Schweizer; Tara Saybe; Vanessa Espinal; Jiji Kabsi  
**Subject:** RE: Hayden v. IBM - deposition scheduling

Robert:

The Revised Fifth Civil Case Discovery Plan and Scheduling Order (Dkt. 139) requires that non-expert depositions shall be completed by October 6, 2023. We do not agree with your proposal to make Mr. Trinh available for deposition during the week of October 11, which would be inconsistent with the Court's Scheduling Order. You accepted service of Mr. Trinh's subpoena on March 15, 2023 – nearly six months ago. Please provide a date for his deposition within the discovery period.

We will take Mr. Gotlieb's deposition on October 2, 2023, beginning at 9:00 AM. We have an office in Houston and can make a conference room available there for the deposition.

Regarding Mr. Cohen, please confirm that you will neither call him as a witness nor seek to submit an affidavit from him during summary judgment or at any other time in the case. If you agree Plaintiff will not be submitting his testimony in any form (affidavit, declaration, deposition, trial testimony, etc.), we can agree to forgo his deposition in view of his health. If, however, Plaintiff plans to rely on Mr. Cohen in any way, we expect him to be made available for deposition on or before October 6.

We also need a date for the second day of testimony from Mr. Hayden.

Is Plaintiff committing that the only individuals from the 29 identified in his initial disclosures that he will call at trial or seek to offer a declaration or affidavit during summary judgment are Daniel Bingham, Frank Cummings, Daniel Gotlieb, Gerald Hayden and David Trinh?

In terms of the depositions that Plaintiff is seeking:

- Is Plaintiff withdrawing his subpoenas to Michael Andrud and Sarah Diamond?
- Is Plaintiff withdrawing his deposition notice to Jean-Stephane Payraudeau?
- Is Plaintiff proceeding with Pablo Suarez's deposition on September 27?
- Mr. Foster is a retired senior IBM executive. He has little availability in the remaining discovery period. At least five attorneys have entered an appearance on behalf of Mr. Hayden. One of them should be available to take Mr. Foster's deposition on September 19. Similarly, Chae An is a former IBM employee with limited availability in the remaining discovery period, and one of the attorneys on your team should also be able to take his deposition on September 20.
- There is no good cause to expand the number of custodians (already an unusually large number at 38) against whom Plaintiff's search terms are run, and Defendants decline to do so. Defendants have nonetheless previously produced documents custodial to individuals you allege to be new.
- We do not know why you are pursuing many of the deponents you are pursuing, and we do not know why you are doing so at this late date. You told us on June 13, 2022 (over 14 mos. ago) that you would serve Tom Eck with a deposition subpoena. You have not done so. Ms. van Kralingen is another retired senior IBM executive. The hundreds of thousands of documents that Defendants produced do not suggest that Mr. Hayden ever met her or that she ever heard of Mr. Hayden. In short, there is zero reason for you to be pursuing her

deposition. It is not our fault that you have refused to take a deposition to date. We repeatedly asked you to do so. We offered Mr. Ramamurthy for deposition over a year ago. Throughout the discovery period, you have sent us lists of nine individual deponents and one 30(b)(6). You've now changed that list a few times, but you've always acknowledged that ten was enough. There is no reason you cannot do what needs to be done within the Federal Rules and within the time provided by the Court. It appears to us that you are simply trying to create an issue where there is none.

Thanks,

Stuart W. Yothers ([bio](#))

Partner

[JONES DAY® - One Firm Worldwide<sup>SM</sup>](#)

250 Vesey Street

New York, NY 10281-1047

Office +1.212.326.3893

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**From:** Robert Goodman <RGoodman@smcomplex.com>

**Sent:** Tuesday, September 5, 2023 11:39 AM

**To:** Yothers, Stuart W. <syothers@jonesday.com>; David Stone <DStone@smcomplex.com>; Julio Gomez <JGomez@smcomplex.com>

**Cc:** Ryan, Colleen Noonan <cnryan@jonesday.com>; Holmes, Jacqueline M. <jholmes@JonesDay.com>; Kurtenbach, Collin <ckurtenbach@jonesday.com>; Robert Magnanini <RMagnanini@smcomplex.com>; Stephen Schweizer <SSchweizer@smcomplex.com>; Tara Saybe <TSaybe@smcomplex.com>; Vanessa Espinal <VEspinal@smcomplex.com>; Jiji Kabsi <JKabsi@smcomplex.com>

**Subject:** RE: Hayden v. IBM - deposition scheduling

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Stuart:

We are writing to propose a schedule for the remaining depositions in light of with the need to serve Mr. Eck, Mr. Lipp and Ms. Van Kraligen, as well as our need to depose a number of the witnesses recently disclosed by Defendants (at this time, Adam Bird, Thomas Bohn, Dominique DuBois, Jurgen Lang, Alfredo Munoz Rios, and John Thompson), to the extent Defendants intend to reserve the right to offer testimony from these witnesses at trial.

As previously advised, Plaintiff will proceed with depositions of Mr. Ramamurthy and Mr. Fuessler on September 7 and September 14. We will also proceed with the deposition of Mr. Korsten by Zoom on September 22. We are not available on September 19 or 20, and will need alternate dates for Mark Foster and Chae An. As previously stated, we request the 30(b)(6) deposition of IBM on October 5 and 6. As soon thereafter as possible, we would proceed with the depositions with Mr. Mantas, Mr. Eck, Mr. Lipp and Ms. Van Kraligen. We would also schedule the depositions of Mr. Bird, Mr. Bohn, Mr. DuBois, Mr. Munoz Rios, and Mr. Thompson as soon as possible after Defendants have run the search terms previously ordered by the Court in the ESI of these witnesses and have produced responsive documents.

With respect to the depositions requested by Defendants, the deposition of Mr. Bingham will proceed in our New Jersey offices as previously agreed on September 12. In addition, Mr. Gotlieb is available for deposition

in Houston, Texas on October 2. With respect to Mr. Cohen, we do not anticipate calling him as a witness at this time in light of his medical condition. If this should change, we will make Mr. Cohen available for deposition. With respect to Mr. Trinh, as agreed in David Stone's letter dated July 26, 2023, we conveyed your concerns with respect to Mr. Trinh's production of documents in response to your subpoena; thereafter, our document vendor worked with Mr. Trinh to locate additional potentially responsive documents and we expect to be producing additional documents for Mr. Trinh this week. Although we are still confirming his availability, we anticipate being able to offer Mr. Trinh for deposition in North Carolina on October 11.

**ROBERT D. GOODMAN**

Senior Counsel

Stone & Magnanini LLP

400 Connell Drive

Suite 6200

Berkeley Heights, New Jersey 07922

(973) 218-1354 – Direct Dial

(973) 218-1111 – Main

[RGoodman@smcomplex.com](mailto:RGoodman@smcomplex.com)

\*Please note that my email address has been changed to [RGoodman@smcomplex.com](mailto:RGoodman@smcomplex.com)\*

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